

AUG 23 1957

JOHN T. FEY, Clerk

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1957

No. 3

FRANCISCO ROMERO,

*Petitioner,*

—against—

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRAS-  
ATLANTICA, also known as SPANISH LINE and GARCIA &  
DIAZ, INC., and QUIN LUMBER CO., INC.,

*Respondents.*

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**BRIEF FOR RESPONDENT, QUIN LUMBER CO., INC.,  
IN OPPOSITION**

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 322

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FRANCISCO ROMERO,

*Petitioner,*

—against—

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRAS-  
ATLANTICA, also known as SPANISH LINE and GARCIA &  
DIAZ, INC., and QUIN LUMBER CO., INC.,

*Respondents.*

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## BRIEF FOR RESPONDENT, QUIN LUMBER CO., INC., IN OPPOSITION

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### Opinions Below

The opinion of the District Court (App., p. 40 of Petition) is reported at 142 F. Supp. 570. The opinion of the United States Court of Appeals for the Second Circuit (App., p. 47 of Petition) is reported at 244 F. 2d 409.

### Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

## **Question Presented**

In the absence of complete diversity of citizenship between an alien seaman and each of the defendants does the District Court have jurisdiction on the civil side of claim for personal injuries sustained on a vessel in navigable waters by the mere sham allegation of the alien seaman that he invokes the benefits of the Jones Act, 46 U. S. C. A. §688, against his employer, an alien shipowner, one of several defendants in this action?

## **Statutes Involved**

The statute which is basically involved is 28 U. S. C. §1332, set forth in the Appendix of Petition. For collateral consideration is 28 U. S. C. §1331 as projected by consideration of the Jones Act, 46 U. S. C. §688.

## **Statement**

Since the affirmance by the Court of Appeals for the Second Circuit of the dismissal of petitioner's complaint because of the absence of diversity of citizenship, petitioner has instituted an action against all the respondents in the Supreme Court of the State of New York, New York County.

Petitioner thereafter filed his petition in this Court urging many points but obscuring the fundamental question, viz., did the District Court have jurisdiction of the subject matter of the action by reason of there not being complete diversity of citizenship between petitioner and each defendant.

It was stipulated upon the hearing to determine jurisdiction of the subject matter herein that the citizenship of the parties was as follows (p. 572 of 142 F. Supp.):

- (a) Plaintiff was a Spanish national.
- (b) Defendant, International Terminal Operating Co., hereinafter referred to as International, was a Delaware corporation.
- (c) Defendant, Spanish Line, was a Spanish corporation.
- (d) Defendant, Garcia & Diaz; hereinafter referred to as Garcia, was a New York corporation.
- (e) Defendant, Quin Lumber Co., Inc., hereinafter referred to as Quin, was a New York corporation.

Manifestly, we have a Spanish subject suing a Spanish subject and 3 citizens of states of the United States on the civil side of the federal Court.

It is the contention of Quin that, since both the petitioner and Spanish Line are aliens, the District Court lacked jurisdiction over the subject matter of the instant action and correctly so held. A determination of the soundness of such contention necessitates an analysis of the amended complaint.

In essence, this is an action brought by a foreign seaman to recover damages for personal injuries sustained while aboard the SS. Guadalupe on May 12, 1954 by reason of the alleged negligence of the defendants. Four causes of action are set forth in the amended complaint.

The first cause of action was asserted against the Spanish Line and Garcia under the Jones Act, 46 U. S. C. §688, and the General Maritime Law (200a).

The second cause of action was asserted against Spanish Line and Garcia under the General Maritime Law for maintenance and cure (201a).

The third cause of action was directed solely against the defendant International and consists of allegations to the effect that it was the negligence of International which caused injury to the plaintiff. It is to be noted that in paragraph "TWENTIETH" of the amended complaint it is alleged as follows (202a):

"The jurisdiction of this Court in regard to plaintiff's claim against the defendant INTERNATIONAL TERMINAL OPERATING Co. is predicated upon diversity of citizenship between the plaintiff and INTERNATIONAL TERMINAL OPERATING Co. and the amount in controversy is in excess of THREE THOUSAND (\$3,000) DOLLARS exclusive of interest and costs, and in addition, said injuries sustained by the plaintiff arose in navigable waters and therefore, said cause of action against the defendant INTERNATIONAL TERMINAL Co. is cognizable under the Constitution of the United States and the General Maritime Law of the United States."

The fourth cause of action set forth in the amended complaint, although purportedly asserted against Quin for its alleged negligence which caused the plaintiff's injuries, contains in paragraph "TWENTY-NINTH" allegations of negligence on the part of each of the defendants-appellees (204a) herein. In so far as the District Court's jurisdiction over the cause of action asserted against the defendant Quin is concerned, it is alleged in paragraph "TWENTY-EIGHTH" of the amended complaint as follows (204a):

"The jurisdiction of this Court in regard to plaintiff's claim against the defendant QUIN LUMBER Co., Inc., is predicated upon diversity of citizenship between the

plaintiff and QUIN LUMBER Co., INC., and the amount in controversy is in excess of THREE THOUSAND (\$3,000.00) DOLLARS exclusive of interest and costs, and in addition, said injuries sustained by the plaintiff arose in navigable waters, and theretofore, said cause of action against the defendant QUIN LUMBER Co., INC., is cognizable under the Constitution of the United States and the General Maritime Law of the United States."

It is thus clear that this action, considered as a whole, is one for damages for personal injuries allegedly caused by the negligence of each of the four defendants herein, notwithstanding the fact that the District Court's jurisdiction was invoked and bottomed on different bases respecting the various defendants.

Without allowing any proof as to the manner in which the accident occurred and therefor in no way determining whether there was negligence on the part of any of the respondents herein, which would then be a determination on the merits, the District Court correctly determined that it first had to find whether the allegation that the alien seaman, petitioner herein, was entitled to the benefits of the Jones Act, 46 U. S. C. §688, was a sham allegation—this, in order to dispose of one facet of the jurisdictional question. In order to determine whether the allegation by the petitioner was sham the District Court took proof as to the rights and obligations of the petitioner and his employer under the contract existing between the petitioner and his employer, the alien shipowner, and as to the operation of said vessel. The District Court found that the allegation that the petitioner was a seaman entitled to invoke the benefits of the Jones Act was a sham allegation and finding no basis for jurisdiction under the Jones Act and no other basis for retention of this matter on the civil

side of the Court the District Court gave the petitioner the choice to transfer the action to the admiralty side of the Court (188a-189a). Upon the petitioner refusing and upon the District Court's determination that it had no jurisdiction on the civil side it dismissed the complaint.

The Court of Appeals affirmed said dismissal on the District Court's "workmanlike opinion below which contains a full statement of the facts" (p. 410 of 244 F. 2d).

### Argument

The issue in this case is a uniquely narrow one although petitioner's counsel has attempted to entwine with the narrow question one which has been decided against him on many occasions.<sup>1</sup> The single narrow question in this matter is whether an alien seaman can confer jurisdiction upon the District Court of his cause of action for personal injuries against multiple defendants by making the sham allegation that as against his employer, an alien shipowner, he is entitled to the benefits of the Jones Act, 46 U. S. C. §688.

If an alien seaman serving on a foreign flag ship with a contract of employment having been entered into in a foreign country, can merely by reason of having been injured in the navigable waters of the United States assert a Jones Act cause of action against his employer, an alien shipowner, then the flood gates are opened to the rush of cases that will be brought in the District Courts on the

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<sup>1</sup> *The Paula*, 91 F. 2d 1001; *O'Neill v. Cunard White Star*, 160 F. 2d 446; *Taylor v. Atlantic Maritime Co.*, 179 F. 2d 597; *Catherall v. Cunard SS Co.*, 101 F. Supp. 230; *Rankin v. Atlantic Maritime Co.*, 117 F. Supp. 253; *Smith v. Furness Withy & Co.*, 119 F. Supp. 369; *Lauritzen v. Larsen*, 345 U. S. 571, 1953 A. M. C. 1210, 1211 (petitioner's counsel as amicus there); *Koziol v. The Fylgia*, 230 F. 2d 651.

civil side, triable by jury, where the only question which has been presented in *this* matter is the jurisdiction of the District Court on the law side where diversity of citizenship is the test and where said diversity is destroyed by the plaintiff being an alien and one of the defendants being an alien.

## **I.**

**The decision below is clearly correct; there is no conflict of decision and there is no important federal question.**

After a searching examination of the authorities with respect to the issues involved in this matter the District Court in its opinion, characterized by the U. S. Court of Appeals for the Second Circuit as a "workmanlike opinion", found that it had no jurisdiction over the subject matter of this action.

It is fundamental learning that the jurisdiction of the District Court is limited solely to those types of actions over which jurisdiction has been specifically conferred by an Act of Congress. Such grants of jurisdiction are specifically set forth in sections 1331-1358 of Title 28 U. S. C. The only section (absent consideration of the Jones Act) pertinent to this action is 28 U. S. C. §1332.

It is provided in 28 U. S. C. section 1332 as follows:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3,000 exclusive of interest and costs, and is between:

- (1) Citizens of different States;
- (2) Citizens of a State, and foreign states or citizens or subjects thereof;

(3) Citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) The word 'States', as used in this section, includes the Territories and the District of Columbia."

By reason of the fact that the petitioner here is an alien and one of the respondents, Spanish Line, is also an alien, it is respectfully submitted that the District Court derived no jurisdiction over the instant action by reason of 28 U. S. C. 1332. The mere fact that *some* of the defendants are citizens of the United States and that actions brought solely against them would have been within the jurisdiction of the District Court is of no consequence, where all have been joined by plaintiff in one action. *Salem Co. v. Manufacturers Finance Co.*, 264 U. S. 182, 44 S. Ct. 266; *Camp v. Gress*, 250 U. S. 208, 39 S. Ct. 478; *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 60 S. Ct. 44.

If the plaintiff and one of the defendants are aliens the District Court has no jurisdiction. *Compania Minera Y Compradora etc. v. American Metal Co.*, 262 F. 183; *Ex Parte Edelstein*, 30 F. 2d 636.

In the recent case of *Tsitsinakis v. Simpson, Spence & Yung, et al.*, 90 F. Supp. 578, we have an action almost identical to the instant one. There, an alien seaman sued several defendants, some of whom were aliens and some of whom were citizens. Judge Irving R. Kaufman in holding that the District Court did not have jurisdiction on the law side when a Jones Act suit had been alleged along with other causes of action said (p. 579):

"It is well settled that in order to sustain jurisdiction of an action based on diversity of citizenship in the federal court, *each plaintiff must be capable of suing each defendant in that court.* See *City of Indianapolis*

v. Chase National Bank, 1941, 314 U. S. 63, 62 S. Ct. 15, 86 L. Ed. 47. The courts of the United States have no jurisdiction of a case in which both parties are aliens, *Kavourgias v. Nicholaon Co.*, 9 Cir., 1945, 148 F. 2d 96, 97; *if both a party plaintiff and a party defendant are aliens the district court lacks jurisdiction, even though there are other parties in the action, as plaintiffs or defendants, who are citizens of the United States.* *Compania Minera y Compradora de Metales Mexicano, S.A. v. American Metal Co.*, D. C. W. D. Tex. 1920, 262 F. 183; *Ex parte Edelstein*, 2 Cir., 1929, 30 F. 2d 636, certiorari denied, *Edelstein v. Goddard*, 1929, 279 U. S. 851, 49 S. Ct. 347, 73 L. Ed. 994." (Italics supplied.)

It is submitted that the District Court on the civil side had no jurisdiction over the instant action since the plaintiff and one of the respondents, Spanish Line, are aliens.

There is no conflict of decision between Circuits with respect to the very narrow issue decided by the District Court and Court of Appeals. The attempt by the petitioner to peg jurisdiction over the subject matter of this action on a "federal question" theory, 28 U. S. C. 1331, is more apparent than real. The petitioner by the mere sham allegation that he is entitled to the benefits of the Jones Act has attempted to invest the District Court with jurisdiction over the entire matter insofar as all defendants-respondents are concerned. In circumstances such as exist in this matter it has been held that the Jones Act is not applicable. *Gambra v. Bergoty*, 132 F. 2d 414; *Taylor v. Atlantic Maritime Co.*, 179 F. 2d 597. Indeed, *Lauritzen v. Larsen*, 345 U. S. 571, cited by petitioner in support of his contention respecting the Jones Act, looks the other way in this respondent's view.

Not being entitled to the benefits of the Jones Act, there is no "federal question" issue in this matter. The District Court has not determined in this case liability on the merits under the Jones Act, which is the impression that one would obtain from petitioner's arguments. It has determined that petitioner cannot invoke the benefits of that statute for jurisdictional purposes in the District Court, a Court of limited jurisdiction, without in any way determining whether the proof, if it ever were adduced upon the trial, would show the respondents or any one of them to be negligent or the vessel to be unseaworthy.

Since this action did not arise under the laws of the United States (and it is to be anticipated that Spanish Line's brief in this matter will show that the rights of the alien seaman arise under and are circumscribed by a Spanish contract) the District Court had no jurisdiction on the law or civil side thereof in the absence of diversity of citizenship, *Paduano v. Yamashita Kisen Kabushiki Kaisha*, 221 F. 2d 615; *Troupe v. Chicago, D. & G. Bay Transit Co.*, 234 F. 2d 253; *Jordine v. Walling*, 185 F. 2d 662.

With there never having been a valid and substantial claim under the Jones Act or under any law of the United States there never was initial jurisdiction so that we could not have a case of pendent jurisdiction. Pendent jurisdiction presupposes a valid prior jurisdiction. *Howard v. Furst*, 238 F. 2d 790, 794. Whether we look at the amended complaint as really stating one cause of action against multiple defendants, although bottomed upon different bases, or as stating more than one cause of action, through any pleader's artistry, we have no pendent jurisdiction. *Hurn v. Oursler*, 289 U. S. 238, 53 S. Ct. 586.

The petitioner's argument with respect to this matter having been a trial on the merits is a disservice to the Dis

trict Court since the Court at no time took any evidence respecting the conduct of the parties which would determine whether said conduct was negligent or not and whether the vessel was unseaworthy in any respect. The District Court confined itself to its jurisdiction to hear this matter on the law or civil side where the petitioner had not accepted the offer of the District Court to allow him to cull out of his amended complaint those defendants against whom diversity of citizenship existed and with the petitioner also refusing to transfer this matter to the admiralty side for trial on the merits.

### **CONCLUSION**

**For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied to which end this brief is**

Respectfully submitted,

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